FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6860
DATE COMPLAINT FILED: August 5, 2014
DATE OF NOTIFICATION: August 12, 2014
DATE OF LAST RESPONSE: September 30, 2014
DATE ACTIVATED: October 28, 2014

EXPIRATION OF STATUTE OF LIMITATIONS:
August 13, 2018 - June 30, 2019
ELECTION CYCLE: 2014

COMPLAINANT: Lon Johnson, Michigan Democratic Party

RESPONDENTS: Terri Lynn Land for Senate and Kathy Vosburg in her official capacity as treasurer

Terri Lynn Land

Pre-MUR 577
DATE SUBMITTED: August 19, 2014
DATE ACTIVATED: October 28, 2014

SOL: December 31, 2018 - March 31, 2019
ELECTION CYCLE: 2014

SOURCE: *Sua Sponte* Submission

RESPONDENTS: Terri Lynn Land for Senate and Kathy Vosburg in her official capacity as treasurer

Terri Lynn Land

Dan Hibma

RELEVANT STATUTES: 52 U.S.C. § 30101(26)[1]
52 U.S.C. § 30104(b)
52 U.S.C. § 30116(a)(1)(A)
52 U.S.C. § 30116(f)
11 C.F.R. § 110.10

[1] On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

11 C.F.R. § 100.33

INTERNAL REPORTS CHECKED: Disclosure Reports; Commission Indices

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter concerns allegations that Terri Lynn Land ("Land") lacked sufficient "personal funds" to make $2.9 million in personal contributions to her authorized committee, Terri Lynn Land for Senate and Kathy Vosburg in her official capacity as treasurer (the "Committee"). The Complaint alleges that the Personal Financial Disclosure Reports that Land filed with the Senate ("PFD Reports") reflected only about $1.3 million in liquid assets and estimated income, and that any portion of her $2.9 million in contributions that was not from her "personal funds" constituted an excessive contribution in violation of the Act.

Land and the Committee filed both a Response and a *sua sponte* submission (the "Submission") in connection with this matter.[2] Land's husband, Dan Hibma, also joined in the Submission. Those filings and other record evidence presently before the Commission reflect that Land made contributions using three sources of funds: (i) $750,000 from her share of assets that she owned jointly with her son; (ii) $700,000 from funds of Hibma he provided directly to Land on the day that the contributions were made; and (iii) $1.45 million from some combination

[2] The Submission was made two weeks after the Complaint was filed and a week after Respondents received notice of the Complaint and its allegations. Respondents requested that the matters not be associated because the Submission stemmed from a voluntary review and was being prepared "prior to the Commission's receipt of the Complaint in MUR 6860." Letter from Charles Spies to Mary Beth DeBeau, FEC (Sept. 12, 2014). The Submission involves some of the same operative facts and the same alleged violation at issue in the MUR, however, and consistent with prior Commission practice we have examined both together. *See, e.g.*, MUR 6054 (Vern Buchanan); MUR 6597/Pre-MUR 534, 537, 538, 539/RR 12L-18, 28, 29, 30, 43 (Kindee Durkee). Moreover, whatever may have led to the preparation of the Submission in this instance, a submission that addresses allegations raised in a previously filed complaint may not warrant the same consideration as a matter "of which the Commission had no prior knowledge." Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

of Land and Hibma's separate incomes deposited over the course of the election cycle into a jointly held checking account.

As discussed at greater length below, we conclude that the first of those sources — involving $750,000 in contributions — appears to constitute the personal funds of the candidate. As to the other contributions, on the current record at least $700,000 in contributions do not appear to constitute contributions from the personal funds of the candidate. Additional fact finding will be required to confirm that view and to determine to what extent the remaining $1.45 million in contributions involved Land's personal funds.

We therefore recommend that the Commission find reason to believe that the relevant Respondents may have made and accepted excessive contributions and failed to report the source of those contributions accurately, violations of 52 U.S.C. §§ 30104(b) and 30116(a)(1)(A) and (f) (formerly 2 U.S.C. §§ 434(b) and 441a(a)(1)(A) and (f)) and approve compulsory process, as necessary.

II. FACTUAL BACKGROUND

Terri Lynn Land was a candidate for U.S. Senate in Michigan during the 2014 election cycle. She lost the general election in November 2014. Terri Lynn Land for Senate is her authorized committee. Dan Hibma is her husband.

According to disclosure reports that the Committee filed with the Commission, Land made a total of $2.9 million in contributions to the Committee in the following amounts by date:

Date	Amount
8/13/2013	$50,000
9/30/2013	$100,000
9/30/2013	$100,000
9/30/2013	$750,000
12/31/2013	$600,000
3/31/2014	$100,000
6/30/2014	$1,200,000
Total	**$2,900,000.00**

Land declared her candidacy on July 10, 2013.[3] She filed with the Senate her 2013 PFD Report on August 1, 2013, covering the period January 1, 2012 to July 30, 2013,[4] and her 2014 PFD Report on May 15, 2014, covering the period January 1, 2013 to May15, 2014.[5] Land's 2013 PFD Report identified liquid assets valued between $116,003 and $315,000 and other assets valued between 647,008 and $1.38 million.[6] Her 2014 PFD Report identified liquid assets valued between $45,003 and $150,000[7] and other assets valued between $646,007and $1.356 million.[8] The 2014 PFD Report also identified estimated income in the form of (i) salary payments of $1,781; (ii) rental/capital gains income between $100,001 and $1 million from Green Light Management, LLC ("Green Light"), a real estate company in which she owns a 51% interest; and (iii) interest on Green Light accounts receivable between $2,501 and $5,000.[9] On July 24, 2014, following press reports questioning whether her disclosed assets were sufficient to

3 *See* Terri Lynn Land Statement of Candidacy (July 10, 2013).

4 Compl., Ex. A.

5 *Id.*, Ex. B.

6 Compl. at 3 (citing Exhibit A).

7 *Id.* (citing Exhibit B).

8 *Id.* at 4 (citing Exhibit B).

9 *Id.*

make $2.9 million in personal contributions to her campaign,[10] Land amended her 2013 and 2014 PFD Reports to disclose an additional joint bank account she held together with her husband, Hibma.[11] The amended PFD Reports indicated that the joint account contained funds valued between $50,001 and $100,000 during the period that each report covered.[12]

In their two responsive filings, the Respondents identify three separate sources of funds for Land's personal contributions to the Committee: (i) funds from the liquidation of Land's share of assets jointly owned with her son;[13] (ii) funds that Hibma wired to Land's accounts on the days that those contributions were made;[14] and (iii) income earned by Land and Hibma and deposited in an account Land jointly owned with Hibma during the course of the campaign.[15]

III. LEGAL ANALYSIS

A. Excessive Contributions

The Act provides that no person shall make contributions to any federal candidate and his or her authorized political committee aggregating in excess of a contribution limit indexed for inflation each election cycle,[16] which for the 2014 election cycle was $2,600.[17] The Act further

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10 *See, e.g.*, Todd Spanger, *Where did Senate Candidate Terri Lynn Land's $3 Million Come From?*, DETROIT FREE PRESS (July 17, 2014) (cited in Complaint at 6 n.13).

11 *See* Amended 2014 PFD Report of The Honorable Terri L. Land (filed July 24, 2014); Amendment to 2013 PFD Report of The Honorable Terri L. Land (filed Oct. 3, 2014).

12 *Id.*

13 Resp. at 2.

14 Submission at 2.

15 Resp. at 3.

16 52 U.S.C. § 30116(a)(1) (formerly 2 U.S.C. § 441a(a)(1)).

17 *See* 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b).

provides that no candidate or candidate committees shall knowingly accept excessive contributions.[18] Contribution limits also apply to a candidate's family members.[19]

Nonetheless, federal candidates may themselves make unlimited contributions from their own "personal funds" to their authorized campaign committees.[20] The Act and Commission regulations provide that "personal funds" are (a) amounts derived from assets that, under applicable State law, *at the time the individual became a candidate*, the candidate had legal right of access to or control over, and to which the candidate had legal and rightful title or an equitable interest; and (b) income received *during the current election cycle*, which includes salary from employment, income from investments, and "gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle."[21] When a candidate uses "personal funds" derived from jointly owned assets, the amount is limited to "the candidate's share of the asset under the instrument of conveyance or ownership;" if the instrument is silent, the Commission will presume that the candidate holds a one-half ownership interest.[22]

[18] 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)).

[19] *See Buckley v. Valeo*, 424 U.S. 1, 51 n.57 (1976) (upholding the constitutionality of contribution limits as to family members because, "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.").

[20] 11 C.F.R. § 110.10.

[21] 52 U.S.C. § 30101(26) (formerly 2 U.S.C. § 431(26)); 11 C.F.R. § 100.33(a), (b). The Commission promulgated section 100.33 in 2003 as the implementing regulation to 2 U.S.C. § 431(26), which set forth a new statutory definition of personal funds as part of the Bipartisan Campaign Reform Act of 2002. Section 100.33 replaced former 11 C.F.R. § 110.10(b). The definition of personal funds largely remained the same, including the provision concerning joint assets, but they differ in other respects not material here. For example, while former section 110.10(b) provided that personal funds included gifts customarily received prior to candidacy, the new statutory provision provided that personal funds included gifts customarily received prior to the election cycle.

[22] 52 U.S.C. § 30101(26)(c); 11 C.F.R. § 100.33(c).

1. Contributions Made with Funds Drawn from Land's Share of Joint Assets or Income from Green Light Management

Land made a $750,000 contribution to her campaign on September 30, 2013. Respondents claim that the source of the contribution was a draw in the amount of $744,000 from Land's joint interest in Green Light and a withdrawal of $6,000 from her personal bank account.[23] On her 2014 PFD Report, Land listed her share of Green Light as being expected to produce income between $100,000 and $1,000,000. The amount of the contribution, sourced from a claimed draw from Land's interest in Green Light, is consistent with the value contemporaneously reported on the PFD Report that Land filed with the Senate. Thus, we believe the available information supports the Respondents' assertion that Land used assets and income that constituted her "personal funds" to make the September 30, 2013 contribution. Accordingly, those funds would not have constituted excessive contributions to the Committee.

2. Funds that Hibma Provided to Land to Cover Particular Contributions

The Respondents separately address two contributions that Land made to her campaign from her own checking account — a $600,000 contribution on December 31, 2013, and a $100,000 contribution on March 31, 2014.[24] According to the Respondents, Land wrote checks drawn on a personal account in her name to make those contributions, but the account lacked adequate funds to cover the contributions when made.[25] Consequently, Hibma wired an additional $710,000 from his account to hers in amounts sufficient to cover those checks on the day they were issued.[26]

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23 Resp. at 2.

24 Submission at 2.

25 *Id.*

26 Hibma wired $610,000 on December 31, 2013, and $100,000 on March 31, 2014. *Id.*

The Respondents assert that Hibma intended that the transferred funds would belong to Land to dispose of as she wished and that he had a history of making transfers to her account for her use.[27] Nonetheless, they offer no information concerning any historical pattern of such transfers before Land's candidacy, nor do they address why the transfers here were made in the same or nearly the same amounts and on the same day as each contribution. Without conceding that the funds were not Land's personal funds, Respondents state that they have segregated the funds and request Commission guidance as to the source of the contributions.[28]

The present record reflects that Hibma appears to have provided his own funds to Land specifically to cover the contributions to the Committee. Land wrote checks to the Committee from a personal account that lacked adequate funds to cover them when written and on the same days that Hibma wired to that account the amounts needed to cover each of those draws. The Commission's decision in MUR 6417 (Huffman) appears to resolve the question. In that matter, the spouse of a candidate wired funds from her own trust account to a joint account that she held in common with the candidate specifically so that the candidate could use those funds to make four loans totaling $900,000 to his committee.[29] The Commission concluded that those funds did not qualify as "personal funds" under section 100.33 and that the spouse of the candidate therefore made an excessive contribution that the candidate and his committee in turn accepted.[30] Here, as in MUR 6417, the $700,000 that Land contributed to the Committee using funds that

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[27] *Id.*

[28] *Id.* at 3.

[29] Factual and Legal Analysis at 3-4, MUR 6416 (Huffman). A fifth loan in the amount of $400,000 was funded through the same solely held trust account of the candidate's spouse, but was wired from that account directly to the candidate's committee. *Id.*

[30] *Id.* at 6. As discussed further below, that the respondents in that matter had transferred funds from the spouse's trust into a joint account that was also used for various family projects and tax payments did not alter the Commission's determination. *See id.*

Hibma provided should be attributed to Hibma. If so, those contributions exceeded Hibma's aggregate contribution limit and were inaccurately reported under the relevant provisions of the Act.

3. Contributions Made With Funds in the Joint Account of Hibma and Land

The Committee reported that Land made another four contributions, totaling $1.45 million, on August 13, 2013 ($50,000), September 30, 2013 ($100,000), September 30, 2013 ($100,000), and June 30, 2014 ($1.2 million). The Respondents assert that those contributions were drawn from a joint checking account that Land owned with Hibma.[31] Respondents represent that Land and Hibma have maintained this joint checking account since 1990 and that the funds in the account are derived from both of their incomes.[32] Land disclosed in her Senate filings that the account was valued at only $50,001 to $100,000 at the time her candidacy began.[33] The Response contends that that amount is simply a "snap shot" of the account's value on March 31, 2014, and that the balance in the account may have fluctuated daily.[34] Regardless, the Respondents do not identify either the amounts that Land and Hibma deposited respectively or the balances in that account on the dates of the relevant contributions.

While income that Land earned during her candidacy qualifies as her personal funds, Hibma's income does not[35] — unless he customarily provided gifts of a personal nature to Land in similar amounts before the election cycle or Land had a legal or equitable ownership interest

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31 Resp. at 3.

32 *Id.*

33 Land's 2013 PFD Reports omitted the joint account held at Chemical Bank. Land apparently disclosed the account in her original 2014 PFD Report, but as an account held in her name. In later amendments filed in July and October 2014, she appears to have reported the account as a joint account.

34 Resp. at 3.

35 52 U.S.C. § 30101(26)(B); 11 C.F.R. § 100.33(b) (limiting personal funds to income of the candidate).

in the relevant funds.[36] Here, Hibma acknowledges that he deposited his income into the joint account during the election cycle. Further, between January 2013 and May 2014, Land's income was only $1,781, her dividends from securities were at most $13,000, and, as the Respondents concede, she had already taken a $744,000 draw on her interest in Green Light. And, according to her 2014 PFD Report, as of May 15, 2014 — shortly before her June 30, 2014 contribution of $1.2 million — the account was valued at only $50,001 to $100,000, the same value Land represented in her amendment to the 2013 PFD Report covering a period 31 days before or after July 30, 2013.[37] The Respondents also provide no information suggesting that Land could have obtained in excess of $1 million in personal assets or income in the short period of time between the period covered in the 2014 PFD Report and June 30, 2014, the date of the $1.2 million contribution. Consequently, it appears that the contributions that Land made from funds in the joint account likely included income attributable to Hibma, not Land, and thus would have been excessive.[38]

Nonetheless, the Respondents take the position that Land was entitled to use all the funds in the joint account whenever deposited and regardless of the purpose of the deposit or her interest in the funds that were deposited.[39] That presupposes that all income deposited in a

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[36] *See* 52 U.S.C. § 30101(26)(B)(vi); 11 C.F.R. § 100.33(b)(6).

[37] According to the Public Financial Disclosure Report for the United States Senate eFD Instructions, a filer should "[v]alue assets and liabilities as of any date you choose that is within 31 days (before or after) of the close of the reporting period." http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=60916d73-412d-4e35-be2b-460741d3627c.

[38] Hibma contributed $2,600 to the primary and the general election campaigns of the Committee, the maximum allowed by law, on July 1, 2013.

[39] Resp. at 3-6. Respondents cite to certain past matters for the proposition that state law should determine whether the funds in the joint account were the personal funds of Land. Resp. at 4 (citing MUR 2292 (Stein), MUR 3505 (Klink), and the Final Audit Report of Friends of Menor). Here, Michigan law provides a rebuttable presumption that joint account holders have equal ownership over funds in those accounts, such that each holder is presumed to own half of the assets in the account. *See* MICH. COMP. LAWS ANN. § 487.703 (the making of a deposit in a joint account "shall . . . be prima facie evidence . . . of the intention of such depositors to vest title to such

jointly held account after a candidate declares her candidacy becomes the personal funds of the candidate. But the Commission rejected that view in MUR 6417, where it found that funds provided to a candidate to cover contributions of the candidate nonetheless remained the separate property of the spouse, notwithstanding that those funds were deposited into a joint checking account before the candidate disbursed them to his campaign committee.[40]

Thus, the present record indicates that Hibma may have transferred funds derived from his solely owned assets and income to Land, either directly or indirectly through their jointly held account, specifically to cover a significant portion of Land's contributions to the Committee. Those funds accordingly would not constitute the personal funds of the candidate. We therefore recommend that the Commission find reason to believe Dan Hibma made excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)) and that Terri Lynn Land and the Committee accepted excessive contributions in violation of 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)).

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deposits"); *Danielson v. Lazoski*, 531 N.W.2d 799, 801 (Mich. Ct. App. 1995). This presumption could be rebutted by either account holder, *Danielson*, 531 N.W.2d at 801, and creation of a joint account does not in fact establish title to funds in that account. *Mitt v. Williams*, 29 N.W.2d 841, 843 (Mich. 1947). In this matter, at present we lack adequate information to assess the application of the equal ownership presumption under state law.

Further, the Commission has not always treated funds in a joint account as wholly the personal funds of the candidate. *See, e.g.*, MURs 4830, 4845 (Udall) (applying one-half rule to find that the candidate had properly used only his half of the jointly owned assets in a brokerage account, which the candidate and his spouse owned as joint tenants with rights of survivorship); *see also* MUR 4910(R) (Rush Holt) (taking no further action where amount in violation was small and the law concerning joint bank accounts was considered "unsettled"). Moreover, the Commission's most recent determination in MUR 6417 (Huffman) reflects that where a spouse deposits income or assets into a joint account from a source that does not belong to the candidate for the purpose of funding a contribution, then such funds do not constitute the personal funds of the candidate.

[40] Factual and Legal Analysis at 6, MUR 6417 (Huffman). With respect to funds extant in the joint account when Land became a candidate, she seemingly would have been entitled to one-half of those funds, given that we have no information as to whether there was an instrument of ownership that stated otherwise. *See* 52 U.S.C. § 30101(26)(C); 11 C.F.R. § 100.33(c). Because the value of the account was reported as being at most $100,000 in her 2013 PFD Report, which covered her July 10, 2013, statement of candidacy, it appears that Land withdrew her share of that balance when she contributed $50,000 on August 13, 2013. Regardless, even accepting the Respondents state-law arguments, *see* Resp. at 3-6; *supra* note 39, and therefore crediting Land with full ownership of the $100,000 that existed in that joint account prior to her candidacy, that additional $50,000 would not cover the $1.45 million in contributions she drew from the joint account during her candidacy.

B. Accurate Reporting of Contributions

The Act requires committee treasurers to file reports of receipts and disbursements.[41] These reports must include, *inter alia*, the identification of each person who makes a contribution or contributions that have an aggregate amount or value in excess of $200 during an election cycle, in the case of an authorized committee of a federal candidate, together with the date and amount of any such contribution.[42]

Here, the Committee's reports identify Land as the contributor of all seven of the contributions at issue. As discussed previously, because the available information suggests that Hibma or Land may have used funds derived from assets solely belonging to Hibma to make at least some of the challenged contributions, the Committee may have been required to report that Hibma made those contributions. Accordingly, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. § 30104(b)(3)(A) (formerly 2 U.S.C. § 434(b)).

IV. INVESTIGATION

The present record does not adequately reflect the circumstances under which Hibma made the transfers in question and to what extent the joint account contained income or assets to which Lang had a legal or equitable right of access at the time she declared her candidacy and at the time the relevant contributions were made. Consequently, we propose to engage in additional fact finding to determine what amount of each contribution constitutes the personal funds of Land, or alternatively, constituted contributions of funds derived from Hibma's personal assets and income. Although we intend to seek information voluntarily, we request that the Commission authorize the use of compulsory process, as necessary.

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41 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

42 *Id.* § 30104(b)(3)(A).

V. RECOMMENDATIONS

1. Open a MUR in Pre-MUR 577 and merge it into MUR 6860;
2. Find reason to believe that Terri Lynn Land for Senate and Kathy Vosburg in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(3)(A) and 30116(f);
3. Find reason to believe that Terri Lynn Land violated 52 U.S.C. § 30116(f);
4. Find reason to believe that Dan Hibma violated 52 U.S.C. § 30116(a)(1)(A);
5. Approve the attached Factual and Legal Analysis;
6. Authorize compulsory process; and
7. Approve the appropriate letters.

Date: 2/26/15

Daniel A. Petalas
Associate General Counsel

Mark Shonkwiler
Assistant General Counsel

Jin Lee
Attorney

Attachment
A. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4
5 **RESPONDENTS:** Terri Lynn Land for Senate and **MUR 6860**
6 Kathy Vosburg in her official capacity as treasurer
7 Terri Lynn Land
8 Dan Hibma
9
10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 ("Commission") by the Michigan Democratic Party[1] and on information ascertained by the
13 Commission in the normal course of carrying out its supervisory responsibilities.[2] The
14 Complaint alleges that Terri Lynn Land ("Land") lacked sufficient "personal funds" to make
15 $2.9 million in personal contributions to her authorized committee, Terri Lynn Land for Senate
16 and Kathy Vosburg in her official capacity as treasurer (the "Committee"). The Complaint
17 further alleges that the Personal Financial Disclosure Reports that Land filed with the Senate
18 ("PFD Reports") reflected only about $1.3 million in liquid assets and estimated income, and that
19 any portion of her $2.9 million in contributions that was not from her "personal funds"
20 constituted an excessive contribution in violation of the Federal Election Campaign Act of 1971,
21 as amended (the "Act").

22 Land and the Committee filed both a Response and a *sua sponte* submission (the
23 "Submission") in connection with this matter.[3] Land's husband, Dan Hibma, also joined in the

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1 *See* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)).

2 *See id.* § 30109(a)(2) (formerly 2 U.S.C. § 437g(a)(2)).

3 The Submission was made two weeks after the Complaint was filed and a week after Respondents received notice of the Complaint and its allegations. Respondents requested that the matters not be associated because the Submission stemmed from a voluntary review and was being prepared "prior to the Commission's receipt of the Complaint in MUR 6860." Letter from Charles Spies to Mary Beth DeBeau, FEC (Sept. 12, 2014). The Submission involves some of the same operative facts and the same alleged violation at issue in the MUR, however, and consistent with prior practice, the Commission has examined both together. *See, e.g.*, MUR 6054 (Vern Buchanan); MUR 6597/Pre-MUR 534, 537, 538, 539/RR 12L-18, 28, 29, 30, 43 (Kindee Durkee). Moreover,

Submission. Those filings and other record evidence presently before the Commission reflect that Land made contributions using three sources of funds: (i) $750,000 from her share of assets that she owned jointly with her son; (ii) $700,000 from funds of Hibma he provided directly to Land on the day that the contributions were made; and (iii) $1.45 million from some combination of Land and Hibma's separate incomes deposited over the course of the election cycle into a jointly held checking account.

As discussed at greater length below, the Commission concludes that the first of those sources — involving $750,000 in contributions — appears to constitute the personal funds of the candidate. As to the other contributions, on the current record at least $700,000 in contributions do not appear to constitute contributions from the personal funds of the candidate. The Commission therefore finds reason to believe that the relevant Respondents may have made and accepted excessive contributions and failed to report the source of those contributions accurately, violations of 52 U.S.C. §§ 30104(b) and 30116(a)(1)(A) and (f) (formerly 2 U.S.C. §§ 434(b) and 441a(a)(1)(A) and (f)).

II. FACTUAL BACKGROUND

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According to disclosure reports that the Committee filed with the Commission, Land made a total of $2.9 million in contributions to the Committee in the following amounts by date:

whatever may have led to the preparation of the Submission in this instance, a submission that addresses allegations raised in a previously filed complaint may not warrant the same consideration as a matter "of which the Commission had no prior knowledge." Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

Date	Amount
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Land declared her candidacy on July 10, 2013.[4] She filed with the Senate her 2013 PFD Report on August 1, 2013, covering the period January 1, 2012 to July 30, 2013,[5] and her 2014 PFD Report on May 15, 2014, covering the period January 1, 2013 to May15, 2014.[6] Land's 2013 PFD Report identified liquid assets valued between $116,003 and $315,000 and other assets valued between 647,008 and $1.38 million.[7] Her 2014 PFD Report identified liquid assets valued between $45,003 and $150,000[8] and other assets valued between $646,007and $1.356 million.[9] The 2014 PFD Report also identified estimated income in the form of (i) salary payments of $1,781; (ii) rental/capital gains income between $100,001 and $1 million from Green Light Management, LLC ("Green Light"), a real estate company in which she owns a 51% interest; and (iii) interest on Green Light accounts receivable between $2,501 and $5,000.[10] On July 24, 2014, following press reports questioning whether her disclosed assets were sufficient to make $2.9 million in personal contributions to her campaign,[11] Land amended her 2013 and 2014

4 *See* Terri Lynn Land Statement of Candidacy (July 10, 2013).

5 Compl., Ex. A.

6 *Id.*, Ex. B.

7 Compl. at 3 (citing Exhibit A).

8 *Id.* (citing Exhibit B).

9 *Id.* at 4 (citing Exhibit B).

10 *Id.*

11 *See, e.g.*, Todd Spanger, *Where did Senate Candidate Terri Lynn Land's $3 Million Come From?*, DETROIT FREE PRESS (July 17, 2014) (cited in Complaint at 6 n.13).

PFD Reports to disclose an additional joint bank account she held together with her husband, Hibma.[12] The amended PFD Reports indicated that the joint account contained funds valued between $50,001 and $100,000 during the period that each report covered.[13]

In their two responsive filings, the Respondents identify three separate sources of funds for Land's personal contributions to the Committee: (i) funds from the liquidation of Land's share of assets jointly owned with her son;[14] (ii) funds that Hibma wired to Land's accounts on the days that those contributions were made;[15] and (iii) income earned by Land and Hibma and deposited in an account Land jointly owned with Hibma during the course of the campaign.[16]

III. LEGAL ANALYSIS

A. Excessive Contributions

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12 *See* Amended 2014 PFD Report of The Honorable Terri L. Land (filed July 24, 2014); Amendment to 2013 PFD Report of The Honorable Terri L. Land (filed Oct. 3, 2014).

13 *Id.*

14 Resp. at 2.

15 Submission at 2.

16 Resp. at 3.

17 52 U.S.C. § 30116(a)(1) (formerly 2 U.S.C. § 441a(a)(1)).

18 *See* 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b).

19 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)).

20 *See Buckley v. Valeo*, 424 U.S. 1, 51 n.57 (1976) (upholding the constitutionality of contribution limits as to family members because, "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors.").

Nonetheless, federal candidates may themselves make unlimited contributions from their own "personal funds" to their authorized campaign committees.[21] The Act and Commission regulations provide that "personal funds" are (a) amounts derived from assets that, under applicable State law, *at the time the individual became a candidate*, the candidate had legal right of access to or control over, and to which the candidate had legal and rightful title or an equitable interest; and (b) income received *during the current election cycle*, which includes salary from employment, income from investments, and "gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle."[22] When a candidate uses "personal funds" derived from jointly owned assets, the amount is limited to "the candidate's share of the asset under the instrument of conveyance or ownership;" if the instrument is silent, the Commission will presume that the candidate holds a one-half ownership interest.[23]

1. Contributions Made with Funds Drawn from Land's Share of Joint Assets or Income from Green Light Management

Land made a $750,000 contribution to her campaign on September 30, 2013. Respondents claim that the source of the contribution was a draw in the amount of $744,000 from Land's joint interest in Green Light and a withdrawal of $6,000 from her personal bank account.[24] On her 2014 PFD Report, Land listed her share of Green Light as being expected to produce income between $100,000 and $1,000,000. The amount of the contribution, sourced

[21] 11 C.F.R. § 110.10.

[22] 52 U.S.C. § 30101(26) (formerly 2 U.S.C. § 431(26)); 11 C.F.R. § 100.33(a), (b). The Commission promulgated section 100.33 in 2003 as the implementing regulation to 2 U.S.C. § 431(26), which set forth a new statutory definition of personal funds as part of the Bipartisan Campaign Reform Act of 2002. Section 100.33 replaced former 11 C.F.R. § 110.10(b). The definition of personal funds largely remained the same, including the provision concerning joint assets, but they differ in other respects not material here. For example, while former section 110.10(b) provided that personal funds included gifts customarily received prior to candidacy, the new statutory provision provided that personal funds included gifts customarily received prior to the election cycle.

[23] 52 U.S.C. § 30101(26)(c); 11 C.F.R. § 100.33(c).

[24] Resp. at 2.

from a claimed draw from Land's interest in Green Light, is consistent with the value contemporaneously reported on the PFD Report that Land filed with the Senate. Thus, the available information supports the Respondents' assertion that Land used assets and income that constituted her "personal funds" to make the September 30, 2013 contribution. Accordingly, those funds would not have constituted excessive contributions to the Committee.

2. Funds that Hibma Provided to Land to Cover Particular Contributions

The Respondents separately address two contributions that Land made to her campaign from her own checking account — a $600,000 contribution on December 31, 2013, and a $100,000 contribution on March 31, 2014.[25] According to the Respondents, Land wrote checks drawn on a personal account in her name to make those contributions, but the account lacked adequate funds to cover the contributions when made.[26] Consequently, Hibma wired an additional $710,000 from his account to hers in amounts sufficient to cover those checks on the day they were issued.[27]

The Respondents assert that Hibma intended that the transferred funds would belong to Land to dispose of as she wished and that he had a history of making transfers to her account for her use.[28] Nonetheless, they offer no information concerning any historical pattern of such transfers before Land's candidacy, nor do they address why the transfers here were made in the same or nearly the same amounts and on the same day as each contribution. Without conceding

[25] Submission at 2.

[26] *Id.*

[27] Hibma wired $610,000 on December 31, 2013, and $100,000 on March 31, 2014. *Id.*

[28] *Id.*

that the funds were not Land's personal funds, Respondents state that they have segregated the funds and request Commission guidance as to the source of the contributions.[29]

The present record reflects that Hibma appears to have provided his own funds to Land specifically to cover the contributions to the Committee. Land wrote checks to the Committee from a personal account that lacked adequate funds to cover them when written and on the same days that Hibma wired to that account the amounts needed to cover each of those draws. The Commission's decision in MUR 6417 (Huffman) appears to resolve the question. In that matter, the spouse of a candidate wired funds from her own trust account to a joint account that she held in common with the candidate specifically so that the candidate could use those funds to make four loans totaling $900,000 to his committee.[30] The Commission concluded that those funds did not qualify as "personal funds" under section 100.33 and that the spouse of the candidate therefore made an excessive contribution that the candidate and his committee in turn accepted.[31] Here, as in MUR 6417, the $700,000 that Land contributed to the Committee using funds that Hibma provided should be attributed to Hibma. If so, those contributions exceeded Hibma's aggregate contribution limit and were inaccurately reported under the relevant provisions of the Act.

3. Contributions Made With Funds in the Joint Account of Hibma and Land

The Committee reported that Land made another four contributions, totaling $1.45 million, on August 13, 2013 ($50,000), September 30, 2013 ($100,000), September 30, 2013

[29] *Id.* at 3.

[30] Factual and Legal Analysis at 3-4, MUR 6416 (Huffman). A fifth loan in the amount of $400,000 was funded through the same solely held trust account of the candidate's spouse, but was wired from that account directly to the candidate's committee. *Id.*

[31] *Id.* at 6. As discussed further below, that the respondents in that matter had transferred funds from the spouse's trust into a joint account that was also used for various family projects and tax payments did not alter the Commission's determination. *See id.*

($100,000), and June 30, 2014 ($1.2 million). The Respondents assert that those contributions were drawn from a joint checking account that Land owned with Hibma.[32] Respondents represent that Land and Hibma have maintained this joint checking account since 1990 and that the funds in the account are derived from both of their incomes.[33] Land disclosed in her Senate filings that the account was valued at only $50,001 to $100,000 at the time her candidacy began.[34] The Response contends that that amount is simply a "snap shot" of the account's value on March 31, 2014, and that the balance in the account may have fluctuated daily.[35] Regardless, the Respondents do not identify either the amounts that Land and Hibma deposited respectively or the balances in that account on the dates of the relevant contributions.

While income that Land earned during her candidacy qualifies as her personal funds, Hibma's income does not[36] — unless he customarily provided gifts of a personal nature to Land in similar amounts before the election cycle or Land had a legal or equitable ownership interest in the relevant funds.[37] Here, Hibma acknowledges that he deposited his income into the joint account during the election cycle. Further, between January 2013 and May 2014, Land's income was only $1,781, her dividends from securities were at most $13,000, and, as the Respondents concede, she had already taken a $744,000 draw on her interest in Green Light. And, according to her 2014 PFD Report, as of May 15, 2014 — shortly before her June 30, 2014 contribution of $1.2 million — the account was valued at only $50,001 to $100,000, the same value Land

[32] Resp. at 3.

[33] *Id.*

[34] Land's 2013 PFD Reports omitted the joint account held at Chemical Bank. Land apparently disclosed the account in her original 2014 PFD Report, but as an account held in her name. In later amendments filed in July and October 2014, she appears to have reported the account as a joint account.

[35] Resp. at 3.

[36] 52 U.S.C. § 30101(26)(B); 11 C.F.R. § 100.33(b) (limiting personal funds to income of the candidate).

[37] *See* 52 U.S.C. § 30101(26)(B)(vi); 11 C.F.R. § 100.33(b)(6).

represented in her amendment to the 2013 PFD Report covering a period 31 days before or after July 30, 2013.[38] The Respondents also provide no information suggesting that Land could have obtained in excess of $1 million in personal assets or income in the short period of time between the period covered in the 2014 PFD Report and June 30, 2014, the date of the $1.2 million contribution. Consequently, it appears that the contributions that Land made from funds in the joint account likely included income attributable to Hibma, not Land, and thus would have been excessive.[39]

Nonetheless, the Respondents take the position that Land was entitled to use all the funds in the joint account whenever deposited and regardless of the purpose of the deposit or her interest in the funds that were deposited.[40] That presupposes that all income deposited in a jointly held account after a candidate declares her candidacy becomes the personal funds of the

[38] According to the Public Financial Disclosure Report for the United States Senate eFD Instructions, a filer should "[v]alue assets and liabilities as of any date you choose that is within 31 days (before or after) of the close of the reporting period." http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=60916d73-412d-4e35-be2b-460741d3627c.

[39] Hibma contributed $2,600 to the primary and the general election campaigns of the Committee, the maximum allowed by law, on July 1, 2013.

[40] Resp. at 3-6. Respondents cite to certain past matters for the proposition that state law should determine whether the funds in the joint account were the personal funds of Land. Resp. at 4 (citing MUR 2292 (Stein), MUR 3505 (Klink), and the Final Audit Report of Friends of Menor). Here, Michigan law provides a rebuttable presumption that joint account holders have equal ownership over funds in those accounts, such that each holder is presumed to own half of the assets in the account. *See* MICH. COMP. LAWS ANN. § 487.703 (the making of a deposit in a joint account "shall . . . be prima facie evidence . . . of the intention of such depositors to vest title to such deposits"); *Danielson v. Lazoski*, 531 N.W.2d 799, 801 (Mich. Ct. App. 1995). This presumption could be rebutted by either account holder, *Danielson*, 531 N.W.2d at 801, and creation of a joint account does not in fact establish title to funds in that account. *Mitt v. Williams*, 29 N.W.2d 841, 843 (Mich. 1947). In this matter, at present the Commission lacks adequate information to assess the application of the equal ownership presumption under state law.

Further, the Commission has not always treated funds in a joint account as wholly the personal funds of the candidate. *See, e.g.*, MURs 4830, 4845 (Udall) (applying one-half rule to find that the candidate had properly used only his half of the jointly owned assets in a brokerage account, which the candidate and his spouse owned as joint tenants with rights of survivorship); *see also* MUR 4910(R) (Rush Holt) (taking no further action where amount in violation was small and the law concerning joint bank accounts was considered "unsettled"). Moreover, the Commission's most recent determination in MUR 6417 (Huffman) reflects that where a spouse deposits income or assets into a joint account from a source that does not belong to the candidate for the purpose of funding a contribution, then such funds do not constitute the personal funds of the candidate.

candidate. But the Commission rejected that view in MUR 6417, where it found that funds provided to a candidate to cover contributions of the candidate nonetheless remained the separate property of the spouse, notwithstanding that those funds were deposited into a joint checking account before the candidate disbursed them to his campaign committee.[41]

Thus, the present record indicates that Hibma may have transferred funds derived from his solely owned assets and income to Land, either directly or indirectly through their jointly held account, specifically to cover a significant portion of Land's contributions to the Committee. Those funds accordingly would not constitute the personal funds of the candidate.

Based on the foregoing, the Commission finds reason to believe Dan Hibma violated 52 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)) and that Terri Lynn Land and the Committee violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)).

B. Accurate Reporting of Contributions

The Act requires committee treasurers to file reports of receipts and disbursements.[42] These reports must include, *inter alia*, the identification of each person who makes a contribution or contributions that have an aggregate amount or value in excess of $200 during an election cycle, in the case of an authorized committee of a federal candidate, together with the date and amount of any such contribution.[43]

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41 Factual and Legal Analysis at 6, MUR 6417 (Huffman). With respect to funds extant in the joint account when Land became a candidate, she seemingly would have been entitled to one-half of those funds, given that there is no information as to whether there was an instrument of ownership that stated otherwise. *See* 52 U.S.C. § 30101(26)(C); 11 C.F.R. § 100.33(c). Because the value of the account was reported as being at most $100,000 in her 2013 PFD Report, which covered her July 10, 2013, statement of candidacy, it appears that Land withdrew her share of that balance when she contributed $50,000 on August 13, 2013. Regardless, even accepting the Respondents state-law arguments, *see* Resp. at 3-6; *supra* note 39, and therefore crediting Land with full ownership of the $100,000 that existed in that joint account prior to her candidacy, that additional $50,000 would not cover the $1.45 million in contributions she drew from the joint account during her candidacy.

42 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

43 *Id.* § 30104(b)(3)(A).

Here, the Committee's reports identify Land as the contributor of all seven of the contributions at issue. As discussed previously, because the available information suggests that Hibma or Land may have used funds derived from assets solely belonging to Hibma to make at least some of the challenged contributions, the Committee may have been required to report that Hibma made those contributions.

Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(b)(3)(A) (formerly 2 U.S.C. § 434(b)).